

The Honorable Robert J. Bryan

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

CIVIL ACTION NO. 3:17-cv-05806-RJB

STATE OF WASHINGTON'S  
SUPPLEMENTAL RESPONSE TO  
DEFENDANT'S MOTION FOR  
PROTECTIVE ORDER

**I. INTRODUCTION**

Defendant GEO Group, Inc. (GEO) proposes in its reply an additional modification of the Court's July 17, 2018, Protective Order. Specifically, GEO proposes the Court adopt U.S. Immigration and Customs Enforcement's (ICE) suggestion to modify paragraph 9 of the Protective Order to read:

All records marked confidential by or from the U.S. Immigration and Custom's Enforcement [sic] (specifically containing third party personally identifiable information) or any records marked confidential by or from the GEO Group that contain personally identifiable information of detainees shall be considered federal records and shall not be subject to the provisions in paragraph 9 of the Protective Order in this matter entered by the Court on June 26, 2018, referring to the Washington Public Records Act, as well as any subsequent Protective Orders that may be entered that refer to the same Act. To the extent that such records are responsive to a request received under that Act, those records shall be referred in full to ICE to be processed in accordance with the Freedom of Information Act, Privacy Act, as well as any other applicable Federal Laws.

The State of Washington opposes GEO's request for an additional modification.

## II. ARGUMENT

The State of Washington opposes GEO's request for three reasons.

First, ICE no longer believes its suggested modification is necessary. In a letter to the parties dated August 14, 2018, ICE stated that, after reviewing Washington's Response to GEO's Motion for Reconsideration, it "does not object to *unredacted* disclosure in discovery; pursuant to a modified protection order as suggested by both parties." *See* Chien Decl. ¶3, Ex. 1. As such, ICE has confirmed that the parties' agreed-to modification and the one already granted by the Court's August 13, 2018, Order, ECF 96, is sufficient to enable full discovery while protecting confidential information.

Second, even if GEO still proposes an additional modification to paragraph 9, Washington could not agree to it because to do so would evade state law. Much like ICE's obligation to process information in accordance with federal laws, Washington has obligations to process information in accordance with the Washington Public Records Act (PRA). Washington cannot—as the proposed language contemplates—unilaterally deem responsive documents to be "federal records" and delegate or "refer[] [such records] in full" to ICE to respond to record requests Washington receives pursuant to state law.

Finally, both Washington's PRA and the Protective Order already provide a basis and procedure for protecting confidential information from public disclosure. Under the Controversy Exemption, "[r]ecords that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery . . . are exempt from disclosure under this chapter." Wash. Rev. Code § 42.56.920. Likewise, the Protective Order sets forth the procedure for the designating party to prevent public disclosure of confidential information. *See* ECF 70 at 11 (requiring that the Civil Rights Unit, or CRU, notify the designating party of any relevant PRA request and barring CRU from producing confidential information or documents subject "unless either authorized by the designating party

1 to do so, or if the designating party seeks judicial intervention within the time allotted for the  
 2 CRU to respond to the request, ordered to do so by the court.”) To the extent ICE continues to  
 3 object to disclosure of any information pertaining to Violence Against Women Act (VAWA), T  
 4 or U visa applicants’ details, TPS application information, Legalization application information,  
 5 battered spouse or child information, and juvenile victim or witness information, *see* Chien Decl.  
 6 ¶3, Ex. 1, Washington does not object to ICE’s proposal of redacting such information. As  
 7 previously stated in the State’s Response to GEO’s Motion for a Protective Order, *see* ECF 81  
 8 at 10, Washington does not seek information about the immigration status of individual detainees  
 9 or their immigration files.

### 10 III. CONCLUSION

11 The State opposes GEO’s proposal to amend paragraph 9 of the Protective Order. The  
 12 Parties agreed-to modification of paragraph 13 of the Protective Order, and subsequently granted  
 13 by the Court, is sufficient for enabling full discovery while protecting confidential information.

14 Dated this 15<sup>th</sup> day of August, 2018.

15 Respectfully submitted,

16 BOB FERGUSON  
 17 Attorney General of Washington

18 *s/ Marsha Chien*

19 LA ROND BAKER, WSBA No. 43610  
 20 MARSHA CHIEN, WSBA No. 47020  
 21 ANDREA BRENNEKE, WSBA No. 22027  
 22 Assistant Attorneys General  
 23 Office of the Attorney General  
 24 800 Fifth Avenue, Suite 2000  
 25 Seattle, WA 98104  
 26 (206) 464-7744  
 larondb@atg.wa.gov  
 marshac@atg.wa.gov  
 andreab3@atg.wa.gov

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was electronically filed with the United States District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated this 15<sup>th</sup> day of August, 2018

s/ Marsha Chien  
Marsha Chien